

# **Weisberg Law**

*Attorneys & Counselors at Law*  
LICENSED IN PA & NJ

7 SOUTH MORTON AVENUE  
MORTON, PENNSYLVANIA 19070  
PH: 610.690.0801  
FAX: 610.690.0880

Additional Offices  
Philadelphia, Pa  
Bala Cynwyd, Pa

*Matthew B. Weisberg*\*^  
*L. Anthony DiJiacomo*~  
*David A. Berlin*^+  
*Gary Schafkopf*^+  
*Yanna Panagopoulos*~+  
*Lisa Claire*#+

Web-Site: [www.weisberglawoffices.com](http://www.weisberglawoffices.com)  
E-Mail: [MWEISBERG@WEISBERGLAWOFFICES.COM](mailto:MWEISBERG@WEISBERGLAWOFFICES.COM)

\*NJ & PA Office Manager  
^Licensed in PA & NJ  
~Licensed in PA  
#Licensed in NJ  
+Of Counsel

*Wednesday, December 16, 2020*

## **Via ECF**

The Honorable Mitchell S. Goldberg  
United States District Court for the Eastern District of Pennsylvania  
601 Market Street, Room 7614  
Philadelphia, PA 19106

Re: Reginald Kirtz v. Trans Union, LLC, et al.  
Civil Action No.: 20-cv-05231 (E.D. Pa)

Your Honor:

Pending before this Honorable Court in the above-captioned matter is co-defendant, United States Department of Agriculture Rural Development Services (“USDA”) pre-motion to dismiss letter request towards a pre-motion conference with this Honorable Court.

The undersigned represents plaintiff.

A. This Honorable Court has jurisdiction

Co-defendant, USDA contends that plaintiff, Kirtz cannot sue the USDA (an instrumentality of the United States) without identifying a specific statutory provision that waives the government’s sovereign immunity from suit.

Towards the above end (i.e., complaint deficiency), Kirtz respectfully requests leave to amend.

Notwithstanding the foregoing request to amend, the Fair Credit Reporting Act” (“FCRA”) specifically defines – as admitted by the USDA – a FCRA “person” as a government or governmental subdivision or agency. 15 U.S.C. § 1681a(b).

As again admitted by the USDA, Bormes v. United States, 759 F.3d 793 (C.A.7 2014), it was held the FCRA's definition of *person* was a waiver of sovereign immunity.

B. The USDA did not meet its obligations under the FCRA

The USDA alternatively presses a complaint factual deficiency where in the complaint Kirtz avers that his "accounts are fully satisfied" (¶¶ 10 & 13) despite Kirtz's foreclosure.

Again, Kirtz respectfully requests leave to amend – it is respectfully suggested that amendment would more fully specify that the foreclosure was reported inaccurately.

C. Conclusion

The FCRA specifically waives sovereign immunity such as the USDA.

The foreclosure was reported inaccurately by the USDA.

That said, Kirtz respectfully requests leave to amend the complaint to better identify: (1) the statute upon which Kirtz brings the FCRA cause as against the USDA-therein indicating the FCRA's waiver of sovereign immunity; and (2) the USDA's post-foreclosure inaccurate reporting.

Towards the above end, anticipating the USDA's thereafter repeated pre-motion correspondence requesting a conference with this Honorable Court towards merits briefing, plaintiff respectfully suggests amendment followed by merits briefing without conference would abide this Honorable Court's efficiencies (especially as there is a Circuit split as to the waiver of sovereign immunity).

Thank you for this Honorable Court's consideration of this letter response consistent with this Court's rules. Of course, Kirtz and counsel are available for a pre-motion conference. Attached is a proposed order in any event. We hope this submission finds Your Honor well and safe.

Sincerely,

/s/ Matthew B. Weisberg  
MATTHEW B. WEISBERG

MBW/dgk

cc: Paul J. Koob, Esq. (Via ECF)  
Evan R. Rutter, Esq. (Via ECF)  
Casey Green, Esq. (Via ECF)  
Andrew J. Petsu, Jr. (Via ECF)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

---

REGINALD KIRTZ

Plaintiff,

v.

TRANS UNION, LLC, et al.

Defendants.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Civil Action No. 20-05231

**JURY TRIAL DEMANDED**

**ORDER**

AND NOW this \_\_\_\_\_ day of \_\_\_\_\_, 2020, upon consideration of Co-Defendant, USDA's Pre-Motion Letter Requesting a Pre-Motion Teleconference, and Plaintiff's Letter Response thereto, it is hereby ORDERED and DECREED that Plaintiff may amend the Plaintiff's Complaint within 21-days from the date of entry of this Order with leave for USDA's formal Motion to Dismiss to thereafter follow.

**AND IT IS SO ORDERED.**

\_\_\_\_\_  
J.